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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,529	12/13/2000	Gerd Hexels	LO24-001	9830

21567 7590 05/06/2003

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SPOKANE, WA 99201-3828

EXAMINER
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BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

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DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/737,529

Examiner

Jennifer A Boyd

Applicant(s)

HEXELS, GERD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/24/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 and 30 is/are allowed.
- 6) ☒ Claim(s) 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments and Accompanying Remarks, filed February 24, 2003, have been entered as Paper No. 9 and have been carefully considered. Claims 7, 8a, 8b and 9 – 21 have been cancelled. Claims 22 – 30 have been added. The objection of claim numbering set forth in paragraph 1 of Paper No. 7 has been rendered moot due to the cancellation of the claims. The 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection of claims 7, 8a and 8b as set forth in paragraphs 2 - 3 of Paper No. 7 has been withdrawn. The 35 U.S.C. 102(b) rejection of claims 7, 8b, 9 – 14 and 20 as anticipated by May (Re 29,630) as set forth paragraphs 5 - 9 of Paper No. 7 has been withdrawn. The 35 U.S.C. 103(a) rejection as being unpatentable over May (US Re 29,630) in view of Srinivasan (US 6,309,987) of claims 8a, 9, 10 – 11, 15 and 21 as set forth in paragraphs 11-13 of Paper No. 7 has been withdrawn. Despite these advances, the invention in its entirety is not found to be patentable for the reasons herein below.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Claim 1 is referred to in the specification on page 1. Claims cannot be referred to in the specification because they might be amended over time thus changing the contents of the specification.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The use of an adhesive in conjunction with the expanded graphite flakes is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The claim as currently drafted is not enabled due to lack of positive recitation of an attachment means of the graphite to the nonwoven. Claims 23 – 25 are rejected due to their dependency on the rejected independent claim.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 27 states that the “two nonwovens and the flakes of expanded graphite are bonded together by the layer of hot-melt adhesive”. It is unclear how one of the nonwovens would be bonded by the layer of hot-melt adhesive because claim 22, from which claim 27 depends, states that a membrane permeable to water vapor and air is arranged between one of the two nonwovens. Additionally, claim 22 describes a laminate which has two nonwoven layers, a membrane permeable to water vapor and air and a layer of graphite flakes. Therefore, the

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laminate as claimed in claim 27 should be a four-layer laminate. Additionally, the claim does not further limit the independent claim.

***Allowable Subject Matter***

8. Claims 29 and 30 are allowed. While May (Re. 29,630) is believed to be the most pertinent prior art, it fails to teach or suggest a structure comprised of discrete flakes of expanded graphite distributed in a layer of hot-melt adhesive between *two* nonwovens, where the flakes are applied to at least one of the nonwovens.

***Response to Arguments***

9. Applicant's arguments with respect to claims 22 - 28 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's arguments, see pages 7 - 8, filed February 24, 2003, with respect to claims 29 - 30 have been fully considered and are persuasive. The rejection of claims 29 - 30 has been withdrawn.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Jennifer Boyd  
May 5, 2003

  
CHERYL A. JUSKA  
PRIMARY EXAMINER